

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 70 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KB PAVRI

Versus

KJ SHETHNA  
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Appearance:

MR JR NANAVATI for Appellant.  
MR TS NANAVATI for Respondent No. 1  
MR PM RAVAL for Respondent No. 2  
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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

This is an appeal filed under Sec.104 of the Civil Procedure Code read with Order 43 Rule 1(r) of the Civil Procedure Code by the original plaintiff of Regular Civil Suit No. 155 of 1995, which is still pending on

file of the City Civil Court, Ahmedabad, challenging correctness, legality, propriety and regularity of order dt. 20/1/1995 passed below Exh.6 presented by the plaintiffs in aforesaid Regular Civil Suit No. 155 of 1995.

Appellants are the plaintiffs and respondent is defendant in aforesaid suit, and therefore, parties will be referred to hereinafter as plaintiffs and defendant respectively at appropriate places.

2. The facts leading to this present appeal in a nut shell are as follows:

The plaintiffs and defendant both are Parsi by religion. There is one Public Charitable Trust known as Ahmedabad Parsi Panchayat (which will be referred to hereinafter as " the Panchayat for the sake of brevity and convenience) and that trust is a registered public trust. It is the case of the plaintiff No.1 that he was elected as a President of the said Panchayat. After he was elected as President of the said Panchayat, he was afflicted by a stroke and he was temporarily handicapped and was unable to satisfactorily attend to the duties as the President of the said Panchayat regularly for some time. It is the case of the plaintiffs that the defendant has, without getting himself duly elected as a President, posed himself to be the President of the said Panchayat. It is their case that the defendant cannot work as the President for the trust. It is their case that plaintiff No.1 still continues to be the President of the said Panchayat.

On or about 5/1/1995, the plaintiff filed Regular Civil Suit No.155 of 1995 against the defendant for a decree of declaration to the effect that the defendant is not holding the post of President in accordance with the Rules of the said Panchayat. Along with the said suit, the plaintiff has also filed one application Ex.5 for an interim injunction restraining the defendant from acting as the President of the said Panchayat and also from presiding over any Meeting of the said Panchayat or its Committee or Sub-Committee.

3. The defendant appeared and contested the suit by filing his written statement Ex.12. It is his case that in the Annual General Meeting of the said Panchayat which was held in the month of December, 1993, he along with other four persons, was duly elected as the President of the Panchayat, wherein he secured highest number of

Votes. It is his case that in the said Meeting of the Board of Trustees held on 28th December, 1993, all the trustees including the plaintiff except Dr. H.R.Dalal and another persons proposed the name of the defendant for the post of President of the said Panchayat and a resolution was passed that Mr. K.J.Shethna i.e. defendant is elected as the President of the said Panchayat, and therefore, it is the case of the defendant that the said resolution was moved by the plaintiffs and was seconded by the trustee Shri T.P.Comisheriat and ultimately, it was resolved that the defendant is hereby elected as the President of the said Panchayat. It is further the case of the defendant that since there was no other candidature for the post of President, there was no question which arose for calling the election to the said post. Thus, it is the case of the defendant that he was duly elected as the President by the trustees in accordance with rules of the said Panchayat.

4. After hearing the learned advocates for both the parties and on going through the documents produced by the rival parties, the learned Judge of the trial Court was pleased to come to a conclusion that plaintiffs have got no prima facie case and that balance of convenience was in favour of the defendant and that no irreparable injuries would be caused to the plaintiffs, if interim injunction is refused. The learned Judge of the trial Court has also observed that there is a delay in filing the suit by the plaintiffs and on considering all the points, which he has narrated in his order, he was ultimately pleased to come to a conclusion that plaintiffs are not entitled to any temporary injunction, and therefore, that application Ex.5 was not allowed and dismissed by his order dt. 20/1/1995. As against that order of dismissal of application Ex.5, the original plaintiffs have preferred this present appeal.

5. I have heard Shri J.R.Nanavati, the learned advocate for the appellants and Shri Ajay Jagirdar, the learned advocate for and on behalf of Shri T.S.Nanavati for the respondent no.1.

6. During the course of arguments, Shri J.R.Nanavati, the learned advocate for the appellants has submitted that during the pendency of this appeal, the appellant No.1 who was the plaintiff no.1 has expired. The plaintiff No.1 had filed this suit, not in his individual capacity but, as alleged by him, in his capacity as the President of the said Panchayat, and therefore, question does not arise for bringing on record the heirs and legal representatives of the plaintiff

no.1. Shri Nanavati has further argued that the plaintiff no.2 was not holding any post in the Managing Body of the said Panchayat. He had contested an election for the post of a Secretary but he lost in that election.

7. I have perused an impugned order of the learned Judge of the trial Court which is challenged in this present appeal. The learned Judge of the trial Court has observed in his order that there is a delay in filing the suit for which there is no explanation from the side of the plaintiffs. His one another observation is that the plaintiffs have suppressed material facts with regard to election which was held for the post of President in the Meeting held in the month of December, 1993. Shri Nanavati has further argued that the election which was held in the year 1993 was for the period of five years and there is a provision in the Rules of the said Panchayat that elected President can continue to hold his post, till new election takes place. The defendant who is present personally before the Court has submitted to this Court that he is still holding the post of President of the said Panchayat and election of new Managing Body of the said Panchayat will take place in the ensuring month of December, 2000.

8. The order which is challenged in this appeal is a discretionary order. The learned Judge of the trial Court has considered all the materials placed before him and after fully considering that materials, he has exercised his jurisdiction in accordance with law. I find nothing otherwise to hold that the order which is challenged in this appeal is perverse, illegal or "not according to law" or capricious.

9. In view of what is stated hereinabove, there is no merits in this appeal. This appeal, therefore, deserves to be dismissed, and accordingly, it is dismissed. No order as to costs.

Date: 17/10/2000. (H.H.MEHTA,J.)  
ccshah